IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 21 OF 2001
WITH
CROSS OBJECTION NO.17 OF 2001

1. Special Land Acquisition
   Officer(South Goa)
   Konkan Railway Corporation
   Limited, Amey Guest House,
   Davorlim Road, P.O.Navelim,
   Salcete Goa, 403 707

2. Chief Engineer,
   Konkan Railway Corporation Ltd.
   Rawnfond, near Margao Railway
   Station, Margao-Goa. ... Appellants

versus

Vinayak J. Thali,
R/o Alto Betim, Goa. ... Respondent

Mr. E. Afonso, Advocate for the Appellants.

Mr. J. P. Mulgaonkar, Advocate for the Respondent.

CORAM : P. V. HARDAS &
N. A. BRITTO,JJ.

DATE : 24TH AUGUST,2004.

ORAL JUDGMENT(PER N. A. BRITTO,J.)

This Appeal with Cross Objections is filed against the Judgment/Award of the learned Additional District Judge-II, Panaji, dated 21st September, 2000, in Land Acquisition Case No.208 of 1996.

2. Some facts are required to be stated to dispose off the Appeal and the Cross Objections.

3. By virtue of Notification dated 23rd September, 1991, issued under Section 4(1) of the Land Acquisition Act, 1894,(Act, for short) published in the Official Gazette dated 30th September, 1991, the Government acquired about 158781 sq. metres of land for the purpose of construction of a new B. G. line between Roha and Mangalore in village Malar of Tiswadi Taluka and in the said acquisition what was involved was an area of 7650 sq. metres belonging to Respondent(Applicant, for short) of survey No.4/4 of Malar, Divar.

4. By Award dated 7th March, 1994, the Land Acquisition Officer awarded to the Applicant compensation at the rate of Rs.12/- per sq. metre. The Applicant sought a reference to be made under Section 18 of the Act and claimed Rs.250/- per sq. metre. In the said reference, the Applicant examined himself and produced a Sale Deed dated 5th November, 1985 and in support of the same examined A.W.2, Edgar Silveira.

5. The learned Additional District Judge, Panaji, used the said Sale Deed as a guide and after taking a deduction of 40% towards development worked out the

market rate at Rs.60/- per sq. metre and then took another deduction of 10%, considering that the land had a gradient, and after considering that the Sale Deed was of the year 1985 awarded escalation in price at the rate of 10% per year and fixed the market value payable to the Applicant at Rs.81/- per sq. metre.

6. Now, the Appellant(Respondent, for short) in the present Appeal has contended that the learned Additional District Judge ought to have maintained the market value at the rate of Rs.12/- per sq. metre. The Applicant in his Cross Objections has prayed for compensation at the rate of Rs.250/- per sq. metre. The Respondent had not led any evidence.

7. The Respondent has filed an application on 19th July, 2004, before this Court purporting it to be an application under O 41, R 27, of the Code of Civil Procedure and in the said application has stated that the Land Acquisition Officer in his Award had referred to sale statistics of lands in Malar village, adjoining the acquired land and the Applicant had admitted about the existence of the said Sale Deeds but the said Sale Deeds could not be produced on record as the certified copies of the same were not available with the Sub Registrar, given the fact that the Mamlatdar had furnished the sale statistics with date of its

registration in the Sub Registrar's Office as dates of execution of Sale Deeds, and, that thereafter, through a search at the Office of the Talathi at Malar, the Respondent found the copies on 30th June, 2004 and after finding the correct date of the execution of the Sale Deeds and its registration numbers the Respondent could get the certified copies of the Sale Deeds on 5th July, 2004 from the Office of the Sub Registrar at Panaji.

8. The Respondent has contended that the said Sale Deeds are very material to decide the controversy in the matter of fixation of the market rate of the acquired land and are required to be brought on record to be read in evidence and the said Sale Deeds are dated 28th November, 1995 pertaining to Survey No.193/30, and dated 12th November, 1986 pertaining to Survey No.114/10 and Survey No.119/10. The first is situated at a distance of about 800 metres from the acquired land. By the first Sale Deed what was sold was 395 sq. metres at the rate of Rs.12.65 per sq. metre and by a second Sale Deed what was sold was 725 sq. metres at the rate of Rs.13.79 per sq. metre.

9. From the records and proceedings, it can be seen that the Applicant closed his case on 14th January, 2000 and the case was fixed for Respondent's evidence on 22nd February, 2000, on which date, the Respondent

sought an adjournment and subsequently on 18th March, 2000, the Respondent closed his case. At no stage did the Respondent represent before the learned Trial Court that they wanted to produce any of the Sale Deeds which were relied upon by the learned Land Acquisition Officer while fixing compensation by his Award dated 7th March, 1994. O 41, R 27 of the Code of Civil Procedure provides for production of additional evidence before the appellate Court. Sub-Rule 1, of Rule 27, of 0 41 of the Code of Civil Procedure provides that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -

(a). the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

aa). the parties seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.

b). the appellate Court may allow such application or document to be produced or any witness to

be examined to enable it to pronounce Judgment or for any other substantial cause, the appellate Court may allow such evidence or document to be produced, or witness to be examined.

10. As already stated, the Respondent did not choose to lead any evidence before the learned Additional District Judge, Panaji at all and had closed their case without leading any evidence whatsoever. It was not the Respondent's case that they had sought any adjournment before the learned Additional District Judge, Panaji to enable them to produce copies of the Sale Deeds which the Respondent is now seeking to produce. The Respondent having declined to produce any evidence whatsoever before the learned Additional District Judge, Panaji, is now precluded to produce the same in the present Appeal. The application, therefore, deserves to be rejected.

11. Admittedly, the Applicant had purchased the very property by a Sale Deed dated 16th December, 1980 at the rate of Rs.3.83 per sq. metre.

12. Mr. E. Afonso, learned Counsel on behalf of the Respondent submits that the market value of the Applicant's property ought to have been fixed by taking the said price as the basis and by giving a

corresponding increase of 10% or 15% over the years. Mr. Afonso, learned Counsel further submits that there was a house in the plot of Sale Deed dated 16th December, 1980 and, therefore, the said Sale Deed ought not to have been considered as the basis for determination of the market value. Mr. Afonso, learned Counsel further submits that considering that the acquired land was situated in an island which was not connected by road there could have been no demand for the land in the said island.

13. In support of his first submission, Mr. Afonso, learned Counsel has placed reliance on the several decisions of the Hon'ble Supreme Court ending with the case of **Shakuntalabai(SMT) and others** v. **State of Maharashtra**((1996) 2 SCC 152.

14. On the other hand, Mr. J. P. Mulgaonkar, learned Counsel on behalf of the Applicant has submitted that the Sale Deed dated 24th February, 1998 could not have been at all ignored.

15. Referring to the case of **Shakuntalabai(SMT) and others** v. **State of Maharashtra**(supra) Mr. Mulgaonkar, learned Counsel has stated that the said case does not lay down any rigid law to be followed in each and every case.

16. We are unable to accept the contentions made on behalf of the Respondent by Mr. Afonso, learned Counsel. In the case of **Shakuntalabai(SMT) and others** v. **State of Maharashtra**(supra) the Supreme Court observed that if there was evidence in the case or admission made on behalf of the claimants as to the market value commanded by the acquired land itself, there was no need to travel beyond the boundary of the acquired land. The Supreme Court observed that the need to take into consideration the value of the lands adjacent to the acquired land or nearabout the area which possessed same potentiality to work out the prices fetched therein for determination of market value of the acquired land would arise only when there is no evidence of the value of the acquired land. In a case where evidence of the value of the acquired land itself was available on record, it was unnecessary to travel beyond that evidence and consider the market value prevailing in the adjacent lands. That was a case where the property was purchased in the year 1957 and the acquisition took place on 11th August, 1965 i.e. to say after a gap of about 7 to 8 years.

17. However, in the case at hand, we find that the acquisition took place after about 11 years and not only that the learned Land Acquisition Officer himself did not follow any such principle for fixing the market

value of the acquired land. The Applicant himself had stated that he had purchased the said land on 24th February, 1998 at a time when there was no development but development activities had started during the peak period from 19th December, 1980 onwards. The learned Land Acquisition Officer himself had taken note of 4 Sale Deeds of the years 1987 and 1988 by which plots were sold at the rates ranging from Rs.12/- to Rs.15/- per sq. metre and had observed that after a lapse of about 5 years the prices had ranged between Rs.12/- to Rs.100/- per sq. metre. The evidence of A.W.2, Dr. Edgar Silveira, did not show that there was a house in the plot sold by him. In fact, not even a suggestion was put to A.W.2, Dr. Silveira that he had sold a plot with a house on it but on the contrary, A.W.2, Dr. Silveira, had stated that after he sold the plot the buyer had constructed a house on the same. Admittedly, the acquired property as well as the plot of Sale Deed dated 16th December, 1980 abutted on either side of the same road going from Divar market via Malar to Narva ferry point but at a distance of about 1.5 kms, from almost one end to another. The evidence produced showed that within a radius of a kilometre or so from the plot of Sale Deed dated 16th December, 1980, there was a local market, school, health centre, church, Panchayat Office, etc. and although, the island might not be connected by a road it was certainly connected by a

ferry. The fact that the Applicant himself purchased a property in the said island and other sale instances showed that there was certainly demand for land in the said island. One cannot overlook the fact that the islanders do have an affinity to their island they belong to and purchase land to build houses thereon. This was evident from several Sale Deeds which were referred to by the Land Acquisition Officer.

18. In our view, the learned Additional District Judge, Panaji, has taken a total deduction of 60% in relation to the Sale Deed dated 16th December, 1980 and after giving a 10% increase has fixed the market value of the acquired land. We do not find that the learned Additional District Judge, Panaji, has committed any manifest error of law or has applied a wrong principle whilst enhancing the compensation payable to the Applicant. Thus, we find there is no merit in the Appeal as well as in the Cross Objections. Consequently, they are hereby dismissed.

P. V. HARDAS, J.

N. A. BRITTO, J.

RD.